IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7017 of 1989

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRINCIPAL- P K BARIA

Versus

DIST EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 7017 of 1989

MR JJ YAJNIK for Petitioner No. 1-2

MS HARSHA DEVANI AGP for Respondent No. 1

MR HJ NANAVATI for Respondent No. 2

MS SEJAL SUTARIA for VH DESAI for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA

Date of decision: 05/04/2002

ORAL JUDGEMENT

#. Heard the learned counsels appearing for the parties.

#. The judgment and order dated 18-08-1989 passed by The Gujarat Secondary Education Tribunal at Ahmedabad, hereinafter called `the Tribunal', on the Application No. 348 of 1986, Nat Chandubhai Gulabbhai vs. The Principal,

Prakash High School, Gadhchanchalav, Tal. Godhra & others is under challenge in this Special Civil Application under Article 226 of the Constitution of India.

#. By the impugned order and judgment, the Tribunal has declared that Mr. Nat Chandubhai Gulabbhai was duly appointed as Assistant Teacher in Prakash High School, Gadhchanchalav, Tal. Godhra with effect from the beginning of the academic year 1984-85 and that he is entitled to emoluments with effect from 15-06-1984. The Tribunal has further declared that Mr. Nat Chandubhai Gulabbhai continued as Assistant Teacher and was entitled to full backwages from 15-06-1984. It has also been directed by the Tribunal that salaries be paid to Mr. Nat Chandubhai Gulabbhai as and when they became due after reinstating him.

#. The declaration that Mr. Nat Chandubhai Gulabbhai was duly appointed Teacher and entitled to salaries is founded on the finding that he actually functioned in the School during the academic years 1984-85 and 1985-86 though, admittedly, there was no order of appointment. The basis for declaring the termination illegal and giving direction for reinstatement of Mr. Nat Chandubhai Gulabbhai is that his services were not terminated in accordance with the provisions of Section 36(1) of The Gujarat Secondary Education Act, 1972, hereinafter called `the Act'.

#. It is not disputed that the appointment of the petitioner was never made in accordance with the procedure prescribed by the provisions of Section 35 of the Act. The provisions of Section 36 of the Act, relied upon by the Tribunal, are applicable to a Teacher as defined in Clause (x) of Section 2 of the Act, according to which `teacher' means a teacher of a registered school. But, such teacher has to be a teacher appointed by following the procedure prescribed by the Act. No teacher who is appointed otherwise than in accordance with the procedure prescribed by the Act can be termed as teacher for the purpose of the Act. If the teacher is not appointed in accordance with the provisions of the Act, the provisions of Section 36 of the Act cannot be held to be attracted. Thus, reliance by the Tribunal upon the provisions of Section 36 is misplaced. Consequently, the declaration that the termination of the services of Mr. Nat Chandubhai Gulabbhai was illegal being contrary to the provisions of Section 36(1) of the Act cannot be upheld. There being no material on record supporting it, the finding that Mr. Nat Chandubhai

Gulabbhai was duly appointed is held to be perverse, rendering the impugned judgment and order unsustainable.

#. In the result, the Special Civil Application succeeds and the impugned judgment and order dated 18-08-1989 is quashed. Rule is made absolute.

(D.S. SINHA, C.J.)

[sndevu]